THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.369 of 2006

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 10th July, 2006

Between:

M/s.Shalivahana Mines Pvt. Ltd.,
rep. by its Director Komraiah,
S/o Venkataiah, 46 years, Business,
R/o Ground Floor Minerva Complex,
Secunderabad ..
Petitioner

and

N.Prakash, S/o Durgaiah, H.No.431,
Deepthi Apartments, East Marredpally,
Secunderabad and others .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.369 of 2006

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The petitioner seeks a Writ of Mandamus to set aside the order, dated 04-06-1997, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, (for short, 'the Act'), Hyderabad in L.G.C.No.253 of 1995.

The petitioner and respondents 1 to 3 herein are the parties to L.G.C.No.253 of 1995. The respondents 1 and 2 herein are the applicants and the petitioner and third respondent herein are the respondents in L.G.C.No.253 of 1995. That application was filed under Section 8 of the Act seeking to declare the respondents as land grabbers and consequently to direct the respondents to handover vacant and peaceful possession of the application schedule mentioned land. L.G.C.No.253 of 1995 eventually culminated in a consent order, inasmuch as both parties filed a compromise petition before the Court and requested the Court to pass the orders accordingly pursuant thereto. That order was passed on 04-06-1997.

Subsequently, the writ petitioner filed I.A.No.390 of 2004 in L.G.C.No.253 of 1995 before the Special Court under Section 151 of the Code of Civil Procedure requesting the Court to set aside and cancel the compromise decree, dated 04-06-1997, passed in L.G.C.No.253 of 1995. That application, after having heard either side, eventually ended in dismissal. Thereafter, the petitioner filed the instant writ petition seeking Writ of Mandamus to set aside the order, dated 04-06-1997, passed in L.G.C.No.253 of 1995. The ground upon which the petitioner is now seeking to set aside the order in L.G.C. No.253 of 1995 seems to be that the respondents 1 and 2 herein misrepresented the facts before the Special Court that they were the owners and eventually the petitioner and the third respondent were constrained to enter into a compromise with the respondents 1 and 2 for taking half of the land, but subsequently it so transpired that APIIC was claiming the ownership over the land and thus a fraud was played upon the Court in having obtained a compromise decree by misrepresenting the facts.

Sri A.Sudarshan Reddy, learned counsel for the petitioner, represents that an application under Section 151 of the Code of Civil Procedure could be maintained for setting aside the compromise decree. According to the learned counsel, since the order, dated 04-06-1997, was an order passed by the Special Court under the A.P. Land Grabbing (Prohibition) Act, no suit could be filed for setting aside that order on the ground of fraud and misrepresentation and therefore the petitioner cannot be remediless.

The learned counsel for the respondents seeks to justify the order in his own way by entering into the merits of the case.

It may be mentioned here that the instant writ petition has been filed assailing the main order, dated 04-06-1997, but not the subsequent order, dated 14-07-2004, passed in I.A.No.390 of 2004. Having already filed an application under Section 151 of the Code of

Civil Procedure and invited an order, it seems appropriate for the petitioner to assail that order. It is no doubt true, petitioner can equally assail the order, dated 04-06-1997, in L.G.C.No.253 of 1995. If the contention of the learned counsel for the petitioner were to be accepted, that itself being an order passed by the Special Court, no suit could be maintained and the petitioner cannot be left remediless. Having regard to the fact that the petitioner is now approaching this Court in the instant writ petition nearly after nine years, on the ground of laches, it's application must fail and it cannot now seek to assail that order in L.G.C.No.253 of 1995, dated 04-06-1997.

Assuming for a moment in the writ petition petitioner seeks to assail the subsequent order, dated 14-07-2004, passed in I.A.No.390 of 2004 in L.G.C.No.253 of 1995, it could be assailed on the ground that the Court committed an error in having dismissed that application on the ground that such an application was not maintainable. Sri A.Sudarshan Reddy, learned counsel for the petitioner, seeks to place reliance upon a judgment of this Court in *Khaja Hussain V. Nasir Basha*[1]. That was a case where a suit in O.S.No.3 of 1955 was filed for partition of the properties belonging to one, late Bahadur Saheb. The plaintiff was the widow of the said Bahadur Saheb and the defendants 1 and 2 were the minor sons of late Bahadur Saheb, represented by their maternal uncle as their guardian. Third defendant in the suit was the brother of Bahadur Saheb. Fourth defendant was the daughter of Bahadur Saheb by another wife. That suit eventually ended in a compromise decree. The guardian of the minors sought for the leave of the Court to enter into a compromise and accordingly the suit was compromised on 02-03-1957 by passing a preliminary decree in terms of the compromise. When a final decree application was filed subsequently and a decree was about to be passed therein, at that stage, an application in

I.A.No.160 of 1961 was filed by the first defendant on the ground that third defendant in the suit played fraud upon the Court by suppressing the agreement entered into by him on 16-01-1953 with his brother, whereunder he agreed to take certain properties and cash in lieu of his share. It appears no leave was granted by the Court in favour of the guardian to enter into a compromise on behalf of the minors in accordance with the provisions contained under Order XXXII Rule 7 of the Code of Civil Procedure. Under those circumstances, this Court held by exercising inherent power the Court can vacate the orders passed by it, having been misled by party. The facts obtained in the instant case are entirely different. The ground now sought to be urged before the Court seems to be that fraud was played upon the Court by misrepresenting the Court by the respondents 1 and 2 herein that they are the owners of the property and in fact APIIS is now claiming ownership over the property. This fact shall have to be established before the Court before seeking to set aside the consent decree passed by the Special Court. It is no doubt true that fraud vitiates the proceedings, but the particulars of fraud shall have to be specifically averred and then shall be proved. The requirement as enjoined under Order VI Rule 4 of the Code of Civil Procedure shall not be lost sight of. We are afraid that in an application filed under Section 151 of the Code of Civil Procedure the Court would not be in a position to adjudicate that contentious issue and declare eventually that the consent decree was an outcome of fraud played upon the Court. Furthermore, finality is given to the orders passed by the Special Court under the provisions of the A.P. Land Grabbing (Prohibition) Act. Therefore, no appeal lies *qua* the orders of the Special Court. The allegation that fraud has been played upon the Court is a pure question of fact. Any decision on that contentious issue, therefore, cannot be reached in an interlocutory application.

Assuming for a moment that such an application could

be maintained as held by this Court in *Khaja Hussain's case*, the petitioner cannot avoid the result of laches. Even the application in I.A.No.390 of 2004 was filed nearly seven years after the decree in L.G.C.No.253 of 1995. If the suit were to be filed, it should be filed within the period prescribed under the limitation Act for setting aside the decree. Though no specific article is there in the schedule appended to the limitation Act prescribing the period of limitation for an application, which is in the nature of the instant one, Article 137, in our considered view, governs squarely the situation. Such an application under Article 137 shall have to be filed within the period of three years from the date of cause of action. The present application, having been filed after seven years, is squarely barred by limitation, as can be seen from Article 137 of the Limitation Act. The Court below dismissed the application on both the grounds of maintainability and on the point of limitation. For the above reasons, we are of the considered view that it has not committed any error or illegality, which warrants interference by this Court.

In the result, the writ petition fails and is dismissed. Under the circumstances, there is no order as to costs. This will not preclude, it may be mentioned, the petitioner to pursue it's remedy in a properly constituted proceeding, if any. No order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

10th July, 2006.
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[1] 1964 (1) ALTR 232